

Writing Contest

Daniel J. Hayes
Seminar 13
Student No. 063

PROFESSIONAL PAPER

I CERTIFY THAT THE FOLLOWING IS MY OWN WORK EXCEPT
AS REFERENCED

Daniel J. Hayes

ABSTRACT

Kennewick Man was found at an Army Corps of Engineers civil works project on the Columbia River near Kennewick, Washington in July 1996. The remains have touched off a controversy between Native Americans, leading scientists and others over rights to the skeleton. For the Corps of Engineers, and rest of the Army, the possibility of archaeological finds conflicting with sustaining base programs is intensifying, but the means to resolve these conflicts is still evolving. The Army needs to do more to deal with these changes. Complex environmental issues such as the Kennewick Man incident require more effective use of multiple skills, disciplines and interagency cooperation. The paper describes why Kennewick Man is important, summarizes applicable current law and policy, outstanding issues to be settled, the current status of the case, and suggests how the Army and Corps of Engineers processes might be improved. The paper discusses the Kennewick Man to exemplify the controversy and explore how better coordinating agency efforts might improve future results.

The Kennewick Man Case Illustrates a New Stress on Installation Managers

The Kennewick Man was found at an Army Corps of Engineers (Corps) civil works project near Kennewick, Washington in late July 1996. Two young men were watching a boat race along the Columbia River and stumbled upon an object in the water near the shore. What they had found was the skull of an approximately 40-year-old man and other human skeletal remains. At first a homicide was suspected and the matter was referred to local law enforcement, but the police quickly determined the matter was outside their jurisdiction. Radiocarbon dating indicated the skull and skeleton to be 9,500 years old.¹

Because the remains were found on government property, it was now up to the Corps to decide what to do with them. A group of respected scientists claimed the right to study the ancient skeleton, noting unusual physical features of the bones. Citing the age of the remains as proof that the bones are of an American Indian, several native groups asked the Corps to turn the remains over to them for burial. The Asatru Folk Assembly, a group of Norse people who worship the god Oden, also claimed the right to bury the remains. They believe that the Kennewick Man is a lost Viking ancestor; a white man who roamed central Washington almost 10,000 years ago.²

A New Framework for Land Managers:

For the Corps and the rest of the Army, the possibility of archaeological finds conflicting with sustaining base programs is intensifying, but the means to resolve these conflicts are still evolving. Complex environmental issues such as the Kennewick Man incident require more effective use of multiple skills, disciplines and interagency cooperation. The Army needs a "strike force" approach to quickly utilize the assets and expertise at its disposal when potentially controversial environmental issues surface.

This paper discusses the Kennewick Man to exemplify the controversy. The paper will describe why the Kennewick Man is important, the current laws and policies, the scientific issues to be settled, the present status of the case, and suggests how the Army and Corps processes might be improved.

Given the wrong kind of luck, this situation could have happened on any Federally-owned installation in the United States. Think about how you would handle a similar situation. How would you decide the issues? What laws and regulations apply? What role should public relations and the press play? Would you know what to do? Who would you turn to?

Who is Kennewick Man, and Why is He Important?

The Kennewick Man, as the skeleton was dubbed, was immediately recognized as an important find. The oldest human remains ever found in Washington State are 10,300 years old; only a few hundred years older than the Kennewick Man.³ But what has made this case more important and controversial are preliminary conclusions that the Kennewick Man was not an American Indian. Much of the claim is based on the work of James C. Chatters, Ph.D., the owner of Applied Paleoscience, a Washington-based archaeological consulting firm.

Shortly after the Kennewick Man was discovered, Dr. Chatters conducted a standard forensic examination and measurements and photographed the skull, teeth, and pathologies, with the help of other physical anthropologists and scientists. He concluded the Kennewick Man "...lacks definitive characteristics of the classic Mongoloid stock to which modern Native Americans belong." He found the skull to be "dolichocranic" [i.e., having a relatively long head], with a narrow face and projecting lower jaw. The

Kennewick Man also had a long, broad nose projecting from his face with high round orbits of the eyes and a "V" shaped jaw, with a pronounced, deep chin. Dr. Chatters believes many of the Kennewick Man's characteristics are "definitive of modern-day Caucasoid peoples" a term commonly associated with white Europeans. However, Dr. Chatters determined that other features, such as the Kennewick Man's dental characteristics might be more consistent with south Asian peoples. He notes that other features that could help identify the Kennewick Man, such as the color of his eyes, skin and hair will likely never be known. Putting it succinctly, Chatters wrote, "...given the millennia since he lived, he may be sire to none or all of us".⁴

In part due to Dr. Chatter's work, the notion that the Kennewick Man may be Caucasian has taken hold in some circles, spawning claims of collusion between the Corps and the tribes. Dr. Chatters maintains that on August 30, 1996, after receiving the radiocarbon results, the Corps terminated the study of the bones and 'seized' the skeleton.^{5 6} Shortly thereafter the Corps issued a notice of intent to repatriate the remains to the Umatilla, Yakama, Nez Perce, Wanapum and Colville Indian tribes. The Umatilla tribe planned to immediately rebury the Kennewick Man in a secret location. Citizens, Congressmen and anthropologists requested that the Corps allow further scientific study, but the Corps refused.⁷ The Umatilla went on record supporting the Corps' decision.⁸ The controversy became widely publicized, particularly in the scientific and Native American communities.

Although the Corps' decision might be praised for being prompt, it did not fully consider the maxim that no good deed goes unpunished. Two lawsuits were filed, questioning the Corps' determination of the Indian lineage of the Kennewick Man.

Bonnichsen et. al. v. United States, et. al., (D. Oregon, Civil No. 96-1481-JE), and Asatru et. al. v. United States, et. al., (D. Oregon, Civil No. 96-1516-JE). Ruling against the Corps, a Federal Magistrate found that the Corps failed to consider all of the relevant factors, acted before it had all of the evidence, failed to appreciate the scope of the issues, did not fully consider or resolve the legal issues, relied on erroneous facts and failed to provide a satisfactory explanation for its actions. The Corps decision to repatriate the remains was vacated and the matter was remanded back to the Corps for further scientific study and resolution of the legal issues.⁹ Claims proliferated that the Corps gave into pressure from Indian tribes for political reasons and engaged in a conspiracy to hide the true history of the first people of the Americas.¹⁰

The Law:

The Native American Graves Protection and Repatriation Act (NAGPRA) was passed in 1990, and its major provisions require repatriation of Indian funerary remains held in museums and in other collections to the rightful tribes.¹¹ NAGPRA also regulates inadvertent discoveries of funerary remains on Federal or tribal lands. Any person inadvertently discovering funerary remains on Federal or tribal land must cease the activity that led to the discovery, take every reasonable precaution to protect the remains, and notify the appropriate Federal agency and Indian tribe.¹² Unfortunately, the appropriate tribal affiliation of the Kennewick Man was not readily apparent. Due to the age of the remains, it may be impossible to affiliate the remains with a particular tribe. While identification of the remains is at the crux of the dispute, it is a gray area in the law.

The Archaeological Resources Protection Act (ARPA) provides penalties for unauthorized excavation or the removal, damage, alteration, defacement of any archaeological resource on Federal lands. Human bones are included in ARPA's description of archaeological resources and archaeological resources found on Federal lands are public property and the gross impact of ARPA is that the Corps is ultimately responsible for the Kennewick Man remains unless they are repatriated under NAGPRA to an Indian tribe. ARPA requires permits to authorize removal of archaeological resources by qualified applicants. The Corps typically issues these permits from the District's Real Estate Office after consultation with the culturally affiliated Indian tribes.¹³ Initially, the Corps issued an ARPA permit to Dr. Chatters, to perform the excavation of the remains although his rights continue the study is in active dispute.¹⁴

Although "Environmental Justice" was not a deciding issue in this case, its theory informs the debate as to how environmental law is evolving. Environmental Justice is a recent policy that requires agencies identify and mitigate disproportionately high and adverse environmental effects of agency actions on minority and low-income people.¹⁵ Environmental Justice's focus is somewhat novel because it is aimed at reducing environmental effects on particular groups and classes of people. Environmental Justice policy and new Executive Orders on Indian Sacred Sites, (E.O. 13007), Consultation and Coordination with Native American Tribal Governments (E.O. 13084) and an Executive Memo on government to government relations with tribes have been incorporated into the Department of Defense (DoD) policy.¹⁶ The current DoD prescriptive, American Indian and Alaska Native Policy recognizes a "unique and distinctive political relationship" between the Indian tribes and the DoD. DoD's responsibilities are based in part on the

Federal government's historic trust responsibilities towards the tribes.¹⁷ DoD policy requires full consultation with the tribes, recognizing the legitimacy of the tribal government. DoD policy further stipulates tribes will have an opportunity to participate in the decision-making processes in matters affecting them.

The net effect of these policies for the Corps, and for other land managing agencies is that the pendulum has swung in a way favorable to tribal interests. It also means the law has greater complexity and decisions must consider not only "hard" science, like engineering and geology, but also more sensitive fare such as what constitutes proper consideration of Indian sacred sites and the appropriate treatment of native funerary artifacts. The Corps or any DoD land manager must engage the tribes and fully and consider the rights and interests of the tribes, but also must thoughtfully and carefully consider all of the issues in light of all of the facts.

The Scientific Issues:

Before any decision can be made on the disposition of the Kennewick Man, there are issues of hard science that must be resolved. Dr. Chatters believes the remains have 'Caucasoid' features because the characteristics of the remains do not fit with any known American Indian group.¹⁸ Yet there are expected variations in any biological population and when viewed across both time and space and members of the same group can and will vary. Scientific proof that the Kennewick Man is not an Indian would consist of a verifiable statistical analysis showing the variations between the Kennewick Man and American Indians of significant and beyond the realm of random chance. Assuming the statistical evidence should be established, identifying significant variations between the Kennewick Man and known Indian groups would not prove the racial group to which the

Kennewick Man belonged. In other words, proving he is not an Indian would not necessarily prove he was Caucasian. Further, the measurements Dr. Chatters used in his assessment have not been published, and the statistical analyses, which should form the basis of Chatters' conclusions, are also unpublished.¹⁹ Thus, Dr. Chatters' claims are not established on the scientific record sufficiently to base a conclusion on his claims.

Current Status:

After the success of the legal challenges to repatriation, the Corps moved the Kennewick Man to the Burke Museum of Natural History and Culture at the University of Washington in Seattle. The Burke Museum provided a controlled atmosphere to protect the bones and prevent their deterioration.²⁰ Meanwhile, the atmosphere outside the museum continued to deteriorate. The controversy was featured on CBS's "60 Minutes" where the Corps was portrayed as the villain. As the controversy continues with claims and counter-claims, the 60 Minutes story is still the only information much of the public has on the Corps' decision.

To settle the claims the Court required the government to conduct additional scientific studies. The Corps requested the National Park Service (NPS) to take over the task of scientific study of the bones and the NPS is implementing a plan that should result in adequate studies to complete the scientific record. This will allow the government to make a reasoned decision under NAGPRA later this year. Expressing need for interagency cooperation, the Corps' spokesman, Dutch Meier, told the Tri-City Herald that '[i]f there is any subject-matter expert agency that can move us on the path toward achieving resolution of this important case, it's our sister Federal agency the Interior Department'.²¹

Centers of Expertise and a "Strike Force" Approach:

In the final analysis, the Corps' decision to look to the NPS for assistance in this matter is a wise one. The Army should fully assess and utilize its internal and external resources in environmental problem solving. The Corps recognizes the need to efficiently use and integrate its resources in its Centers of Expertise Program.²² Centers of Expertise are specific organizations with advanced knowledge in a particular subject area and are ready to assist other Corps Districts in the event they are needed. Centers of Expertise are run on a cost reimbursable basis, so they are paid for their work in much the same fashion as an outside consultant. Some Centers of Expertise are voluntary meaning it is up to the user to determine the need to employ the Center. The Corps' St. Louis District is the mandatory Center of Expertise for Archaeological Collection and Curation, yet the services of the Center of Expertise were not fully involved in the initial phases of the investigation. One of the lessons learned is that Corps Districts should fully utilize the Centers of Expertise. In order to assist other Corps districts in the event of future NAGPRA finds, the St. Louis District has developed protocols for other Corps Districts. But adherence to protocols is not enough. In order for centralized expertise to be used effectively, organizations must drop the concept of turf.²³

Aside from protecting turf, managers' reluctance to use centers of expertise may be due to the cost-reimbursable feature of the Centers of Expertise program. The Centers of Expertise concept might be expanded in the Army by centralized funding to increase the Centers' interoperability. Further, the Centers of Expertise concentrate within one area or discipline and are not necessarily cross-disciplinary. Even more widely focused interdisciplinary and interagency approaches could bring synergistic benefits, but it is

unlikely they could be funded on a cost-reimbursable basis. The Army should consider a more aggressive environmental "strike force" approach that could address not only the scientific and technical issues, but help manage press relations, legal issues and facilitate interagency cooperation. Such a strike force would allow the Army to bring expertise to bear in public relations, archaeology, law, engineering or any other related discipline to assist a besieged installation.

Finally, the revolution in the Internet and computerized communications opens up new possibilities for the Army to concentrate the effects of its environmental expertise without physical consolidation. Greater possibilities for effective, cross-organizational and cross-disciplinary synthesis are available through innovative uses of technology. But breakthroughs will require more than digitizing the current mechanical processes, they will require new thinking and new methods of teambuilding.

Conclusion:

Increasingly, environmental matters have a more socio-political basis. Laws, customs, policies and public relations can as easily influence the decisions and outcomes as engineering and science. As demonstrated by the Kennewick Man case, these matters are sometimes too complex for any one discipline and require timely, simultaneous application of considerable specialization and broad interdisciplinary knowledge. Army land managers must take great care to rebalance the needs of the traditional scientific community and other stakeholders. The Army should maintain qualified environmental specialists as an important part of its sustaining base. It should also consider effective cross-disciplinary "strike force" teams to address situations like the Kennewick Man case.

Our drive to provide good government beseeches us to devise a means to reach across interests, beliefs, organizations and disciplines but the law is evolving in a way that demands one.

ENDNOTES

-
- ¹ Willard, Angie Kennewick Man...a Mystery that May Never be Solved (p. 2), undated, URL <http://social-nev-regional.org.kennewick22.html>, retrieved from the World Wide Web on February 7, 1999.
 - ² Lee, Mike Ancient Ritual Pays Tribute to Kennewick Man Tri-City Herald, August 28, 1997. URL <http://www.tri-cityherald.com/bones/news/082897.html>, retrieved from the World Wide Web February 11, 1999.
 - ³ Willard, Angie Kennewick Man...a Mystery that May Never be Solved (p. 2), undated, URL <http://social-nev-regional.org.kennewick22.html>, retrieved from the World Wide Web on February 7, 1999.
 - ⁴ Chatters, James C., Ph.D. Northern Clans, Northern Traces, (1997). URL http://nrmnhwww.si.edu/arctic/html/kennewick_man.html, retrieved from the World Wide Web on February 13, 1999.
 - ⁵ Science, Vol. 280, May 8, 1998, Government Plucks Up Kennewick Finger, URL <http://www.niec.net/ipcb/archeological/kenwick1.html>, retrieved from the World Wide Web on February 7, 1999

-
- ⁶ Chatters, James C., Ph.D. Northern Clans, Northern Traces, (1997). URL http://nmnhwww.si.edu/arctic/html/kennewick_man.html, retrieved from the World Wide Web on February 13, 1999.
- ⁷ *Ibid.*
- ⁸ Minthorn, Armand Human Remains Should Be Reburied September, 1996, URL <http://www.umatilla.nsn.us/kennman.html>. Retrieved from the World Wide Web on February 14, 1999.
- ⁹ Bonnichsen, et. al., v. United States of America, et. al., (969 F. Supp. 628, *644; 1997 U.S. Dist. LEXIS 9323, **47, p.14).
- ¹⁰ Beam, Louis Kennewick Man or Dead "Indians" Don't Lie [undated] URL <http://www.louisbeam.com/kennewick.htm>, retrieved from the World Wide Web on February 22, 1999.
- ¹¹ Native American Graves Protection and Repatriation Act, PL-101-601, 104 Stat. 3048, (November 16, 1990).
- ¹² 43 CFR § 10.4 (1997).
- ¹³ DA PAM 200-4, Cultural Resource Management, Headquarters, Department of the Army, Washington D.C., October 1, 1998. (p 12) URL http://aec-www.apgea.army.mil:8080/prod/usaec/eq/conserv/crmp_03.htm#documents retrieved from the World Wide Web on February 18, 1999.
- ¹⁴ Chatters, James C., Ph.D. Northern Clans, Northern Traces, (1997). URL http://nmnhwww.si.edu/arctic/html/kennewick_man.html, retrieved from the World Wide Web on February 13, 1999.
- ¹⁵ E.O. 12898, Federal Actions to Address Environmental Justice in Minority and Low Income Populations, February 11, 1994, U.S. Army Corps of Engineers, Directorate of Civil Works, Environmental Desk Reference, <http://www.usace.army.mil/inet/fun...ecwa/ENVVDREF2/execords/ex12898.htm> retrieved from the World Wide Web on February 9, 1999.
- ¹⁶ DA PAM 200-4, Cultural Resource Management, Headquarters, Department of the Army, Washington D.C., October 1, 1998. (pp. 7-9) URL http://aec-www.apgea.army.mil:8080/prod/usaec/eq/conserv/crmp_03.htm#documents retrieved from the World Wide Web on February 18, 1999.
- ¹⁷ Department of Defense American Indian and Alaska Native Policy, (undated copy) obtained from Don Kohler, Assistant Chief, Regulatory Branch, Alaska

-
- District Corps of Engineers, and Johnny Duplantis, Alaska District Corps of Engineers Native Liaison, via e-mail attachment, February 10, 1999.
- 18 Kodack, Mark, Ph.D., personal communications on February 3, 1999.
- 19 *Ibid.*, February 5, 1999.
- 20 Lee, Mike Kennewick Man Changes Hands, Tri-City Herald (April 2, 1998) URL <http://www.tri-cityherald.com/bones/news/040298.html>, retrieved from the World Wide Web on February 11, 1999.
- 21 *Ibid.*
- 22 Engineering Regulation 1110-1-8158 (January 16, 1998). U.S. Army Corps of Engineers, Washington, D.C. URL <http://www.usace.army.mil/inet/usace-docs/eng-regs/er1110-1-8158/toc.htm>, retrieved February 18, 1999
- 23 Trimble, Michael, Ph.D., personal communication on February 15, 1999.

BIBLIOGRAPHY

- Willard, Angie Kennewick Man...a Mystery that May Never be Solved URL <http://social-nev-regional.org.kennewick22.html>, retrieved from the World Wide Web February 7, 1999. Discusses numerous aspects of the Kennewick Man discovery.
- Lee, Mike Ancient Ritual Pays Tribute to Kennewick Man Tri-City Herald, August 28, 1997, retrieved from the World Wide Web February 11, 1999. URL <http://www.tri-cityherald.com/bones/news/082897.html>. Discusses the Asatru Folk Assembly ritual honoring Kennewick Man.
- Chatters, James C. Ph.D., Northern Clans, Northern Traces, URL http://nmnhwww.si.edu/artic/html/kennewick_man.html, retrieved from the World Wide Web on February 13, 1999. Discusses the history and certain conclusions of the Kennewick Man investigation.
- Beam, Louis Kennewick Man or Dead "Indians" Don't Lie [undated] URL <http://www.louisbeam.com/kennewick.htm>, retrieved from the World Wide Web on February 22, 1999. Discusses Kennewick Man and other archaeological discoveries and suggests an effort to conceal a history of Caucasian presence in the ancient Americas.

Science, Vol. 280, May 8, 1998, Government Plucks Up Kennewick Finger, URL <http://www.niec.net/ipcb/archeological/kenwick1.html> retrieved from the World Wide Web on February 7, 1999. Discusses the controversy over the study of Kennewick Man remains.

DA PAM 200-4, Cultural Resource Management, pp. 7, 9 and 12. Headquarters, Department of the Army, Washington D.C., October 1, 1998. URL http://aec-www.apgea.army.mil:8080/prod/usaec/eq/conserv/crmp_03.htm#documents retrieved from the World Wide Web on February 18, 1999. Published regulatory and administrative guidance for the Army Cultural Resource program.

E.O. 12898, Federal Actions to Address Environmental Justice in Minority and Low Income Populations, February 11, 1994, U.S. Army Corps of Engineers, Directorate of Civil Works, Environmental Desk Reference, URL <http://www.usace.army.mil/inet/fun...ecwa/ENVVDREF2/execords/ex12898.htm> retrieved from the World Wide Web on February 9, 1999. Executive Order on Environmental Justice.

Department of Defense American Indian and Alaska Native Policy, (undated copy) obtained from Don Kohler, Assistant Chief, Regulatory Branch, Alaska District Corps of Engineers, and Johnny Duplantis, Alaska District Corps of Engineers Native Liaison, via e-mail attachment, February 10, 1999. Copy of policy document.

Minthorn, Armand Human Remains Should Be Reburied, September, 1996, Retrieved from the World Wide Web on February 14, 1999. URL <http://www.umatilla.nsn.us/kennman.html>. A member of the Board of Trustees member and religious leader with the Confederated Tribes of the Umatilla Indian Reservation discusses the Umatilla' nations desire to rebury the Kennewick Man remains.

McMannan, Don Federal Judge Criticizes Army Corps' Handling of Kennewick Man, Tri-City Herald, June 28, 1997, URL <http://www.tri-cityherald.com/bones/news/062897.html>, retrieved from the World Wide Web February 11, 1999. Discusses rulings of Federal Magistrate Judge John Jelderks with regard to Kennewick Man.

Lee, Mike Kennewick Man Changes Hands, Tri-City Herald (April 2, 1998) URL <http://www.tri-cityherald.com/bones/news/040298.html>, retrieved from the World Wide Web on February 11, 1999. News Article discussing the transfer of Kennewick Man from the Army Corps of Engineers to the Department of the Interior.

Engineering Regulation 1110-1-8158 (January 16, 1998). U.S. Army Corps of Engineers, Washington, D.C. URL <http://www.usace.army.mil/inet/usace-docs/eng-regs/er1110-1-8158/toc.htm> retrieved February 18, 1999. Establishes and outlines

Centers of Expertise within the Corps of Engineers for a number of technical specialties.